ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **0379-14-R**

International Brotherhood of Electrical Workers, Local Union 353, Applicant v **Strabag Inc.**, Responding Party v Construction Workers, Local 52, affiliated with the Christian Labour Association of Canada, Intervenor

BEFORE: Eli A. Gedalof, Vice-Chair

APPEARANCES: Kathryn Carpentier, Howard McFadden and Gord Nye appearing for the applicant; Andrew Reynolds and Teri O'Neill appearing for the responding party; Elizabeth Forster, Andrew Regnerus and Randall Boessenkool appearing for the intervenor

DECISION OF THE BOARD: June 22, 2015

INTRODUCTION

1. This is a displacement application for certification filed under the construction industry provisions of the *Labour Relations Act, 1995,* S.O. 1995, c.1, as amended (the "Act"). There have already been a number of preliminary decisions in this matter. By decision dated March 31, 2015, the Board identified two related issues as being the next matters to be determined in this application.

2. The main issue to be determined is whether the March 31, 2014 voluntary recognition agreement between the responding party ("Strabag") and the intervenor ("Local 52") applicable to the Mid-Halton WWIP Effluent Outfall Tunnel project in Oakville (the "VRA") was in effect at the time this application was filed. The effective date of the VRA is significant because Strabag and Local 52 argue that if it is in effect, then this application is untimely, or at least that the Mid-Halton Project must be excluded from the bargaining unit.

3. The related issue is whether it is necessary to hear extrinsic evidence, beyond what is not in dispute between the parties, in order to ascertain the effective date of the VRA. Although the Board had heard brief submissions on this issue on a previous hearing date, it was not satisfied that the parties had received a full opportunity to address the issue, and therefore set the issue down for hearing on May 7, 2015.

4. The parties made comprehensive submissions at the hearing, and the Board is now prepared to determine these issues. In doing so, as noted in the Board's March 31, 2015 decision, the Board has regard to the direction set out in a July 11, 2014 decision of the Board, differently constituted. In that decision the Board found that there did not appear to be many material facts in dispute between the parties, and directed the parties to file statements setting out all of the material facts on which they intend to rely in making their submissions on the motion to dismiss the application, the timeliness issue and the description of the appropriate bargaining unit. The parties were cautioned that they would not be permitted to lead evidence in relation to any fact that is not contained in the statement of material facts they had each filed. The parties filed their statements, and it is on the basis of the uncontested facts pleaded by the parties and the material facts in dispute that Strabag and Local 52 seek to adduce that the Board makes this decision. In other words, having regard to the facts that are not in dispute, the Board is assessing whether it is necessary to hear the contested evidence proposed by the responding party and intervener in order to determine the effective date of the VRA.

THE FACTS

5. The VRA reads as follows, with emphasis added to the triggering clauses that are in issue:

> VOLUNTARY RECOGNITION AGREEMENT
>
> Between
>
> STRABAG Inc.
> (Hereinafter referred to as "the Employer")
>
> And
>
> CONSTRUCTION WORKERS UNION, LOCAL 52
> (Affiliated with LOCAL 52)
> (Hereinafter referred to as "the Union")

The Employer hereby agrees to voluntarily recognize Construction Workers Union, Local 52 affiliated with the Christian Labour Association of Canada as the exclusive bargaining agent of all its construction employees, including but not limited to, all crane operators, machine operators, heavy equipment mechanics, carpenters, mill wrights, electricians, welders, construction labourers, working forepersons, and any apprentices of the same, save and except non-working forepersons and persons above the rank of non-working forepersons.

The geographic scope of this agreement is such that it is limited to the Mid-Halton WWIP Effluent Outfall Tunnel in the Town of Oakville ("The Mid-Halton Project").

This agreement becomes effective in the event that the employer is awarded the Mid-Halton Project for which the tenders are due March 4, 2014 and were subsequently extended to March 25, 2014 and thereafter to April 8, 2014.

The Employer agrees that the terms and conditions in a Collective Agreement between the parties that covers the SeC Project and which expires June 30, 2014, as amended in the bargaining process for the renewal of that Collective Agreement shall be the basis for the commencement of negotiations for the Collective Agreement applicable to the Mid-Halton Project.

The Collective Agreement will be subject to ratification by the workers at the Mid-Halton Project and shall be effective upon ratification of the workers to be employed on the site. It shall continue until August 2017.

The Employer agrees and acknowledges that it will require the construction workers from the union should it be awarded the contract for the Mid-Halton Project and will request the union to supply those construction workers. **Upon being awarded the Mid-Halton Project**, it shall meet with the union to discuss the supply of manpower and commence negotiations for the project agreement specifically for the Mid-Halton Project.

> **This understanding and agreement shall become effective on commencement of the project if the employer is awarded the project.**
>
> Signed this 31st day of March, 2014.
>
> [emphasis added]

6. In its statement of facts, the responding party pleaded the following, upon which it relies in support of its interpretation of the VRA:

> 6. On April 8, 2014, Strabag submitted a bid to Halton Region ("Halton" or the "Region") for the Mid-Halton Wastewater Treatment Plant Effluent Outfall Tunnel project in Oakville, Ontario (the "Mid-Halton Project"). Strabag had been preparing this bid submission since at least January 2014, and had been involved in the pre-qualification process prior to that. Prior to the bid submission, Strabag believed it had a reasonable but not guaranteed expectation of being the successful bidder for the Mid-Halton Project.
>
> 7. In order to ensure a steady supply of tradespersons and stable and predictable terms and conditions of employment (such as wage rates, hours of work, subcontracting restrictions etc.) in the event it was awarded the Mid-Halton Project, Strabag entered into a Voluntary Recognition Agreement with CLAC dated March 31, 2014 (the "March 2014 Voluntary Recognition Agreement") [Book 1, Tab 4]. It was important to Strabag to have this agreement in place prior to submitting a bid, in order to be sure it would have a source of skilled labour in the event it was awarded the Mid-Halton Project and in order to have a better idea as to what price Strabag could bid the project.
>
> 8. Following numerous discussions between CLAC and Strabag in the weeks and months leading up to the signing of the document, the March 2014 Voluntary Recognition Agreement ultimately provided, in full:
>
> [see terms of VRA above]
>
> 9. As noted above, Strabag submitted its bid for the Mid-Halton Project on April 8, 2014, as did the other

companies bidding against Strabag. At the time it submitted its bid, Strabag was aware that it had complied with any and all of the requirements set out in the tender package. The only thing left to determine was whether or not Strabag was the low bidder for the Mid-Halton Project.

10. Strabag and the other six companies that submitted bids for the Mid-Halton Project were prequalified bidders. This meant that those companies, and only those companies, were qualified by the owner to submit bids for the Mid-Halton Project. This also meant that the owner of the Mid-Halton Project (i.e. the Region) had already decided that Strabag and the other six companies were qualified, able and competent to carry out the Mid-Halton Project – the only thing left to determine was which company would be the low bidder for the Mid-Halton Project. In other words, because Strabag was a prequalified bidder and because it had complied with all of the tender requirements, it was clear that Strabag would be awarded the Mid-Halton Project it was the low bidder for that job.

11. On April 8, 2014 (the same day the seven companies submitted their bids) Strabag was informed that it was the low bidder for the Mid-Halton Project. This was confirmed in an email sent at 2:48 pm on April 8 by Ryan Doyle, an Office Engineer employed by Strabag [Book 1, Tab 5]. Mr. Doyle indicated that was "pleased" to announce the "bid prices" and "bid results" because being the lower bidder meant that Strabag was also the successful bidder.

12. In the construction industry in Ontario, and specifically in the context of large projects such as the Mid-Halton Project where all of the companies submitting bids are large, established and reputable construction industry contractors that have been prequalified by the owner to submit bids, being the low bidder for a particular project means, essentially without a shadow of a doubt, that the company is also the successful bidder for the project.

13. Strabag was also the low bidder on the only two other construction projects it has performed in Ontario, the SeC Project and the Niagara Third Hydro Tunnel project.

14. Two or three days after Strabag was notified it was the low bidder for the Mid-Halton Project, Strabag corresponded with the engineering company (Hatch Mott MacDonald, which was managing the tender process for the Region) and escrow agent (Langlois Konrad Inskster LLP) retained by Halton in connection with the Mid-Halton Project regarding the deposit of Strabag's escrow bid documents with the escrow agent and the provision of the required follow-up documentation to the Region [Book 1, Tab 6]. This procedure was initiated, at the latest, at 12:20 pm on April 11 by way of an email from Hatch Mott to Strabag. The body of this email read:

> "Congratulations on Strabag's bid for the Mid-Halton Outfall Project.
>
> Please find attached a document detailing procedure for depositing Strabag's Escrow Bid Documents with Escrow Agent and for providing the required follow-up documentation to the Region of Halton."

The body of another email sent by Hatch Mott to Strabag at 12:48pm on April 14 confirmed:

> "Thank you both for your prompt replies, and again, congratulations on your bid.
>
> We're very happy to hear that Strabag has been in contact with Larry/LKI regarding deposit of the EBDs."

15. As per the Mid-Halton Project's tender guidelines and as is standard procedure with large construction industry contracts, as low bidder Strabag put its bid documents into escrow with a third party (the Region's escrow agent) so that those documents could be referred to in the future if there was a dispute between the contracting parties (specifically, Strabag and the Region) regarding the amount charged by Strabag to the Region for the work performed on the Mid-Halton Project. The fact that Strabag was asked to put its bid documents into escrow was another clear indication that Strabag was the successful bidder for the Mid-Halton Project.

> 16. Once it was confirmed on April 8 that Strabag was the low bidder for the Mid-Halton Project, the Region apparently drafted an internal Bid Report recommending that Strabag's low bid be accepted. The Region's formal approval of this Bid Report, which was essentially "rubber stamping" process, occurred on May 28, 2014. This is confirmed in a letter dated June 2, 2014 form the Region to Strabag [Book 1, Tab 7], as well as in a Bidding Award Notice Detail [Book 1, Tab 8]. A Notice to Commence Work was later sent from the Region to Strabag on July 22, 2014 [Book 1, Tab 9].

7. Local 52 adopted the statement of facts put forward by Strabag, but also relied on the following statements set out in its Statement of Material Facts:

> On April 8, 2014, Strabag was advised that it was the low-bidder on the Mid-Halton Project.
>
> Thereafter, Local 52 and Strabag entered into discussions about the terms fo the collective agreement covering the Mid-Halton Project.
>
> Local 52 and Strabag also began to make arrangements to identify the manpower needs for the project and how Local 52 would supply those needs.

8. The IBEW application for certification was filed on May 8, 2014.

ARGUMENT AND ANALYSIS

The IBEW's Argument

9. The IBEW argues that there are two separate conditions precedent to the VRA becoming effective. The first is found in the third paragraph of the VRA, which provides that the agreement "becomes effective in the event that the employer is awarded the Mid-Halton Project…" (the "first condition"). The second is found in the concluding paragraph of the VRA, which provides that "[t]his understanding and agreement shall become effective on commencement of the project if the employer is awarded the project" (the "second condition"). The

IBEW argues that there is nothing ambiguous about either condition, and that on the face of the undisputed facts, it is clear that neither condition has been met. With respect to the second condition, the IBEW argues that the parties opposite have not alleged a single fact in support of the conclusion that the project had "commenced". With respect to the first condition, the IBEW argues that taking Strabag's statement of material facts at its highest, it has stated that it was clear that Strabag "would be" awarded the project, because it was the low bidder, and that by the time the IBEW filed its certification application it was clear that Strabag was the successful bidder. Even accepting that it is inevitable that Strabag would be awarded the project (which the IBEW disputes), the IBEW argues that the VRA still requires the actual event to occur before it becomes effective. The parties did not say that it becomes effective "if Strabag is the low bidder", or stipulate any other similar articulation of the condition. The VRA, argues the IBEW, requires a particular event to occur which, even on the basis of Strabag and Local 52's facts as pleaded, had not occurred by May 8, 2014 when the IBEW filed its application.

10. In the course of the IBEW's argument, the IBEW referred to certain conditions in the tender documents which, on their face, retained the contracting party's discretion to NOT award the project to lowest bidder. The responding party argued that in doing so, the IBEW was itself relying on extrinsic evidence to interpret the voluntary recognition agreement. The IBEW sought to distinguish between this documentary evidence, and the kind of interpretive evidence which the parties opposite sought to adduce. I do not agree that the IBEW's reliance on this evidence can be distinguished from reliance on the extrinsic evidence put forward by Strabag and Local 52. It is evidence which would certainly be relevant if Strabag were to be permitted to lead evidence that in the construction industry, it is inevitable that when contractors such as Strabag, who are pre-qualified for a major project, are advised that they are the low bidder, this means that they have effectively been awarded the contract and that a reference to being "awarded" a contract therefore also includes being advised of a low bid. But in my view it is still extrinsic evidence being proffered for the purpose of interpreting the VRA. In assessing whether it is possible to interpret the VRA without extrinsic evidence, the Board will not therefore have regard to the terms of the tender documents.

11. The IBEW relied on *United Food and Commercial Workers' Union, Local 401 v. Real Canadian Superstore*, (2008) 172 L.A.C. (4th) 289 (Alta. C.A.), and the authority cited therein, for the basic

principles of contract interpretation, arguing that in the absence of a conflict between the two triggering clauses, they should both be given their plain and ordinary meaning: read as a whole, in a manner that is internally consistent and giving effect to the plain meaning of the words, the IBEW argues that it is clear that the parties did not intend the VRA to come into effect until the commencement of the project. The IBEW also relied on *United Brotherhood of Carpenters and Joiners of America, Local 579 v. Bradco Construction Ltd.* [1993] 2 S.C.R. 316; *Crown Electric* [1978] OLRB Rep. April 344; *Tischler Woodworking,* 2002 CanLII 13298 (ON LRB); *Andy Schollig c.o.b. Tischler Woodworking,* 2002 CanLII 6913 (ON LRB); *Sandin Services Inc.*, 2005 CanLII 16345 (ON LRB); *Fisher & Ludlow Inc. v. CAW-Canada, Local 504* (2012) 220 L.A.C. (4th) 436 (Newman); and *OJCR Construction Ltd.* 2008 CanLII 69853 (ON LRB) all of which stand for the proposition that it is generally inappropriate to hear extrinsic evidence concerning the proper interpretation of written documents unless there is an ambiguity that can only be resolved through hearing that evidence. The fact that parties may disagree about the appropriate interpretation is not on its own a basis for hearing extrinsic evidence.

Strabag's Argument

12. Strabag relies on the Board's decision in *Ellis-Don Ltd.* [1988] OLRB Rep. Dec. 1254 for the basic proposition that the Board should hear extrinsic evidence if there is a latent or patent ambiguity in the terms of the VRA. It argues that the VRA is patently ambiguous, because it does not set out a specific date on which it becomes effective. Given that the date cannot be found within the four corners of the document, it is necessary to hear extrinsic evidence to determine what that date is. Once the Board is hearing evidence in this regard, Strabag argues that it is incumbent on the Board to hear all of the parties' evidence.

13. Further, Strabag argues that even if the strict conditions for hearing extrinsic evidence are not met, it is always appropriate for the Board to hear contextual evidence, particularly where words might have a meaning specific to a particular industry or setting. Strabag argues that the term "awarded" should be understood in the context of the construction industry and what it means to be the low bidder amongst a group of large, established and pre-qualified contractors. In this regard, the responding parity relied on an arbitration award in *Sault Ste. Marie v. Amalgamated Transit Union, Local 1767* [2014]

O.L.A.A. No. 450 (Hayes), in which the arbitrator found that without requiring a formal demonstration that there is a latent or patent ambiguity, it may be appropriate to hear contextual evidence concerning such matters as "how particular words should be specially understood in a particular industry or setting, bargaining history, and the practice of parties in the implementation or application of the particular clause in question" (at para 46).

14. With respect to the question of how the two separate triggering clauses in the VRA ought to be read, Strabag agreed with the general principles of interpretation put forward by the IBEW. However, Strabag argued that applying these principles, it is clear that the two triggering clauses are intended to apply to two different aspects of the agreement. The first clause refers only to the actual voluntary recognition of Local 52 set out in the first paragraph of the VRA. The second clause refers only to the collective agreement that is to be bargained in the event that Strabag is awarded the contract. If this were not the case, and if the IBEW's interpretation were accepted, Strabag argues that the obligation to bargain an agreement, which is clearly intended to precede the commencement of work on the project, would be meaningless.

Local 52's Argument

15. Although Local 52 did not dispute that the applicant was entitled to bring its *prima facie* motion, it was also Local 52's position that the Board in its July 24, 2014 decision had made clear that the parties could call evidence where there are facts in dispute. It is clear, argues Local 52, that there are facts in dispute in this case, and the Board should therefore hear the evidence.

16. Local 52 adopted and supported the arguments put forward by Strabag. Local 52 argued that the term "awarded" is not necessarily a term of art, and that in interpreting it, the Board should look to the parties' understanding, and their behaviour based on that understanding. The fact that the parties began taking steps to assess manpower and negotiate a collective agreement after Strabag was advised it was the low bidder is consistent, argues Local 52, with their interpretation of the first condition and the conclusion that the VRA was binding at that time. This kind of evidence, argues Local 52, is consistent with the reasoning in the *Sault Ste. Marie* case relied upon by Strabag.

17. Further, Local 52 argued that if the Board found that it was not possible to read the triggering clauses together in a coherent manner, then the Board should hear what were the intentions of the parties, and take any steps necessary to rectify the agreement to give effect to those intentions. Local 52 relied in this regard on the Board's decision in *Kone Inc.* 2005 CanLII 25603 (ON LRB) in this regard.

Analysis

18. The first issue that must be determined is whether there is one or two conditions precedent to voluntary recognition of Local 52 by Strabag within the terms of the VRA. If, as the IBEW argues, the second condition is a pre-condition to the VRA becoming effective, then in my view it is clear that the agreement was not in effect. No party has pleaded any fact in support of the conclusion that the project had "commenced", and the uncontested facts are that the bidding process was only just concluding, which, in the absence of any facts to the contrary, provides a more than sufficient basis to conclude that the project had not commenced.

19. There was no significant dispute between the parties concerning the general interpretive principles which the Board ought to apply in interpreting the VRA. They are essentially the same principles applicable to statutory interpretation. To paraphrase Elmer Driedger in the *Construction of Statutes*, as cited in Supreme Court of Canada's decision in *Rizzo & Rizzo Shoes Ltd.* (Re), [1988] 1 S.C.R. 27, the words of the agreement should be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the agreement, the object of the agreement and the intention of the parties.

20. The Alberta Court of Appeal in *United Food and Commercial Workers' Union, Local 401 v. Real Canadian Superstore*, *supra*, citing Brown Beatty's leading text *Canadian Labour Arbitration*, 4th ed, articulated the proper approach to determining the intention of the parties in contract interpretation as follows:

> First principles require that the Arbitrator interpret the salient provisions in the context of the Agreement as a whole and in a manner that avoids conflicts or internal inconsistencies within the Collective Agreement. The parties are presumed to have drafted an agreement that avoids such inconsistencies. It follows that the

> interpretation which accords with that end reflect the parties' true intent.

21. In my view, applying these principles, the responding party's interpretation of the manner in which the two triggering clauses operate is to be preferred. The first triggering clause follows immediately after the paragraph in which the employer "agrees" to voluntarily recognize Local 52, and states that the "this agreement" becomes effective in the event that the employer is awarded the project. What follows are a series of paragraphs setting out the parameters for negotiating a collective agreement, which include an obligation to "meet with the union to discuss the supply of manpower and commence negotiations of the project agreement specifically for the Mid-Halton Project". The final paragraph is the second triggering clause which provides that "this understanding and agreement shall become effective on commencement of the project if the employer is awarded the project".

22. While the language is not a model of clarity, particularly given that both clauses refer to an "agreement", I accept that the reference in the second clause to "this understanding and agreement" could not have been intended to refer to the voluntary recognition of Local 52 set out at the start, and that it is more likely that it refers to the collective agreement that is to be negotiated in accordance with the preceding paragraphs. As Strabag and Local 52 argue, if it was intended to mean that the entire agreement, including the voluntary recognition of Local 52, did not come into effect until the commencement of the project, then this would conflict with the obligation to start bargaining the project agreement upon being awarded the project. To interpret it in this manner would not be to read the agreement in its entire context in a harmonious manner. The applicant's interpretation cannot reconcile this internal contradiction, whereas the responding party's does. Further, the structure or organization of the agreement itself lends coherence to the responding party's interpretation, where the first triggering clause follows the voluntary recognition agreement and the second follows the provision for bargaining a collective agreement. Reading the agreement as a whole and harmoniously, I accept that the voluntary recognition of Local 52 by the employer "becomes effective in the event that the employer is awarded the Mid-Halton project", and that commencement of the project is not a pre-condition to that aspect of the VRA.

23. The remaining question, then, is whether it is necessary to hear extrinsic evidence in order to properly interpret the first

condition, or whether without such evidence the Board can determine whether Strabag was "awarded the Mid-Halton Project", within the meaning of the VRA, at the time the IBEW filed its application.

24. It is well established that the use of extrinsic evidence in interpreting a collective agreement is the exception rather than the rule. The Supreme Court of Canada succinctly articulated the basis for the general prohibition on the use of extrinsic evidence in *United Brotherhood of Carpenters and Joiners of America, Local 579 v. Bradco Construction Ltd.* [1993] 2 S.C.R. 316, at para. 42:

> The general rule prohibiting the use of extrinsic evidence to interpret collective agreements originates from the parol evidence rule in contract law. The rule developed from the desire to have finality and certainty in contractual obligations. It is generally presumed that when parties reduce an agreement to writing they will have included all the necessary terms and circumstances and that the intention of the parties is that the written contract is to be the embodiment of all the terms. Furthermore, the rule is designed to prevent the use of fabricated or unreliable extrinsic negotiations to attack formal written contracts.

25. In my view, the final caution concerning the potential unreliability of such extrinsic evidence is particularly significant where the interpretation affects the rights of third parties, and where the parties that negotiated the agreement are allied in interest. This is not in any way to impugn any improper motive to Strabag and Local 52. But it is simply the case that they have a shared interest in obtaining an interpretation of the VRA that would preclude the IBEW from bringing its application. In the circumstances, the Board ought to be very cautious about relying on such evidence to determine the statutory rights of a third party that is affected by that agreement, and that is adverse in interest to the parties to that agreement.

26. In my view, given the context of this dispute, in order to establish a basis upon which the Board ought to hear extrinsic evidence, Strabag and Local 52 must establish that there is some ambiguity in the VRA, such that it cannot be properly interpreted without regard to that evidence. The Board in *Crown Electric* [1978] OLRB Rep. April 344 provides a useful articulation of the distinction between a true ambiguity, whether patent or latent, versus a simple

disagreement between the parties concerning the proper interpretation of the agreement (at paras. 12-13):

> 12. Generally parol evidence or extrinsic evidence is not admissible to vary or contradict the terms which appear on the face of a written agreement unless there is established some ambiguity in the document itself. Extrinsic evidence may be adduced as an aid to interpretation where ambiguity is patent on the face of the agreement. It may also be introduced to establish a latent ambiguity, that is an ambiguity which is not apparent on a plain reading of the document itself.
>
> 13. But a distinction must be drawn between latent ambiguity and a mere difference of interpretation of words which are not otherwise ambiguous. Parol evidence may be necessary to establish latent ambiguity respecting the formal validity of documents, the identity of parties or the meaning of technical terms or terms of special usage *(Alampi v. Swartz* (1964), 43 DLR (2d) 11 (Ont. C.A.). It may be admitted to show ambiguity in the use of a proper noun, as where two parties agreed to the sale of cotton to be delivered "ex Peerless" from Bombay where there were in fact two ships named "Peerless" sailing from Bombay at different times *(Raffles v. Wichelhaus* (1864) 159 E.R. 375). But the mere fact that there may be two arguably different constructions of a set of words does not of itself establish latent ambiguity. Because of the greater evidentiary value of written instruments and the general need for legal finality, courts and boards of arbitration alike have declined to admit extrinsic evidence that would do no more than establish the possibility of two contrary and selfserving interpretations.

27. In considering whether it is necessary to hear extrinsic evidence in this case, it is useful in my view to bring some clarity to what the parties are referring to here as "extrinsic evidence". Strabag argues, in part, that it is necessary to hear extrinsic evidence because the agreement itself does not specify the effective date, i.e., it identifies an event, but not the date on which that event takes place. In my view, the fact that evidence may be required to determine whether the triggering event occurred is not the same thing as determining that evidence is required in order to determine what was meant by the triggering event in the first place. If the agreement is

triggered by the submission of a low bid, for example, the Board might be required to hear evidence as to whether Strabag had submitted the low bid (although that fact is not actually in dispute in this case). But that is not "extrinsic evidence" within the meaning of the parol evidence rule. It is not the same thing as concluding that evidence is required to determine whether the agreement is triggered by the submission of a low bid in the first place. Local 52 and Strabag seek to call evidence that in the specific circumstances of this case, Strabag having been advised that they were the low bidder is essentially the same thing as their having been awarded the contract.

28. The second kind of evidence they seek to lead, which was emphasised more by Local 52 in its argument, was testimony to support the parties' position that when they used the word "awarded" in the VRA, they intended that to include the state of affairs that existed when Strabag was determined to be the low bidder.

29. In my view, it is neither necessary nor appropriate to hear testimony with respect to either of these issues, in order to properly interpret the VRA. The term "awarded" is simply not ambiguous, and none of the evidence which the responding party or the intervenor seek to introduce would establish any latent ambiguity. To state the obvious and tautological, the project is awarded when the contracting party awards it to the contractor. The material facts pleaded in this regard are as follows:

> Once it was confirmed on April 8 that Strabag was the low bidder for the Mid-Halton Project, the Region apparently drafted an internal Bid Report recommending that Strabag's low bid be accepted. The Region's formal approval of this Bid Report, which was essentially "rubber stamping" process, occurred on May 28, 2014. This is confirmed in a letter dated June 2, 2014 from the Region to Strabag…

30. I agree with the IBEW that there is a significant distinction between finding that an event will inevitably occur, and finding that the event has in fact occurred. Strabag and Local 52 argue that the actual awarding of the project was essentially a "rubber stamp". Yet, if the terms of the agreement are that it become effective upon the issuance of the "rubber stamp", the inevitability of the event does not assist them. That, in my view, is the case here. The project cannot be said to be "awarded" until the bid is actually accepted, any more than a falling object can be said to have hit the ground until the point of

impact. A recommendation that a bid be accepted, no matter how likely that recommendation is to be followed, is not the same thing as actually accepting the bid. Such a plain language interpretation is entirely consistent with the agreement as a whole, and provides for a clear and discernable date for the implementation of the VRA. I simply see no basis upon which the Board should depart from the plain language meaning of the term "awarded".

31. For these reasons, the Board finds that it is unnecessary and would not be appropriate to hear extrinsic evidence in order to properly interpret the VRA. On the facts pleaded by the responding party and Local 52, there is no basis for concluding that the contract was in fact "awarded" to Strabag prior to the IBEW filing this application. To the extent that this application seeks bargaining rights that overlap with the scope of the VRA, the VRA was not in effect at the time of the application, and the application is timely. Neither does the VRA provide any basis for excluding the Mid-Halton project from the scope of the bargaining unit sought by the IBEW.

32. The Board refers this matter to the Registrar to schedule a brief conference call with the parties, at the earliest opportunity, in order to clarify the extent of any outstanding issues in this matter, and to determine how it should proceed to conclusion.

33. I remain seized.

"Eli A. Gedalof"
for the Board